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From: Michele Morrow Legal Assistant to Francis Lammes	No. of Pages Including Cover Sheet: 31
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Re: Application No. 09/409,594 Attorney Docket No: AT9-99-254	
Date: Thursday, February 16, 2006	
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bassett et al.

Serial No.: 09/409,594

Filed: September 30, 1999

For: Method and Apparatus for User-  
Controlled Selective Overlay in a  
Streaming Media

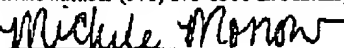
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PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER§ Group Art Unit: 2614  
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§ Examiner: Salce, Jason P.  
§  
§  
§ Attorney Docket No.: AT9-99-254

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By:

  
Michele MorrowTRANSMITTAL DOCUMENTCommissioner for Patents  
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Sir:

ENCLOSED HERewith:

- Appeal Brief (37 C.F.R. 41.37).

A fee of \$500.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,



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FEB 16 2006

Docket No. AT9-99-254

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bassett et al.

§

§ Group Art Unit: 2614

Serial No. 09/409,594

§

§ Examiner: Salce, Jason P.

Filed: September 30, 1999

§

§


For: Method and Apparatus for User-  
Controlled Selective Overlay in a  
Streaming Media

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§

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Alexandria, VA 22313-1450, facsimile number (571) 273-8300  
on February 16, 2006.

By:

  
Michele Morrow**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on December 19, 2005.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this  
brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.(Appeal Brief Page 1 of 29)  
Bassett et al. - 09/409,594

**REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation.

**RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

**STATUS OF CLAIMS****A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-9, 11-30, and 32-44.

**B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims canceled: 10 and 31.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: 1-9, 11-30, and 32-44.
4. Claims allowed: NONE.
5. Claims rejected: 1-9, 11-30, and 32-44.
6. Claims objected to: NONE.

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1-9, 11-30, and 32-44.

**STATUS OF AMENDMENTS**

There are no amendments after the final rejection.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

#### ***Independent claims 1, 22, and 43:***

The present invention provides a method in a data processing system for user controlled selection of multimedia data streams for an event. (Specification, page 12, line 14, to page 13, line 8) The present invention receives a set of video streams. (Specification, page 21, line 33, to page 22, line 2) The present invention receives a set of audio streams. (Specification, page 21, line 33, to page 22, line 2) The present invention selects ones of the set of video streams. (Specification, page 22, lines 2-7) The present invention selects ones of the set of audio streams. (Specification, page 22, lines 2-7) The present invention selectively alters ones of the selected video streams and ones of the selected audio streams for the event in response to user input to the data processing system, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream. (Specification, page 22, line 32 to page 23, line 10; page 19, line 16-17; page 12, lines 27-29; and page 14, lines 12-18) The present invention presents the selected and altered streams concurrently. (Specification, page 23, lines 10-11)

The data processing system recited in claim 22, as well as dependent claims 23-30 and 32-34, may be receiving means and altering means provided by data stream processing system 502, selecting means provided by user control 508, presenting means provided by output means 506 of Figure 5, and synchronization means provided by data stream processing system 502 processing packets processing packets that contain header 716 includes an ID field 718, a time stamp field 720, and a CRC field 722 performing the steps described in the specification at page 21, lines 29, to page 24, line 6 and page 19, line 24 to page 20, line 11, or equivalent. A person having ordinary skill in the art would be able to derive computer instructions on a computer readable medium as recited in claim 43 given Figure 8 and the corresponding description at page 21, line 29 to page 24, line 6, without undue experimentation.



***Independent claims 14, 35, and 44:***

The present invention provides a method for tailoring a multimedia presentation of an event on a computerized multimedia system. (Specification, page 12, line 14, to page 13, line 8)

The present invention provides a set of video streams, a set of audio streams and a set of information streams for the event via a network coupled to the computerized multimedia system. (Specification, page 13, line 31, to page 14, line 18) The present invention selects video streams for presentation from the set of video streams for the event. (Specification, page 22, lines 2-7) The present invention selects audio streams for presentation from the set of audio streams for the event. (Specification, page 22, lines 2-7) The present invention selects information streams for presentation from the set of information streams for the event. (Specification, page 22, lines 2-7)

The present invention selectively alters ones of the selected video streams and ones of the selected audio streams for the event in response to user input to the data processing system, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream. (Specification, page 22, line 32 to page 23, line 10; page 19, line 16-17; page 12, lines 27-29; and page 14, lines 12-18) The present invention assigns the selected and altered video streams and the selected and altered audio streams to respective portions of video and audio output devices in response to user input. (Specification, page 14, line 19, to page 18, line 23) The present invention presents the selected and altered video streams and the selected and altered audio streams for the event according to selected video stream and audio stream assignments concurrently. (Specification, page 23, lines 10-11)

The data processing system recited in claim 35, as well as dependent claims 36-42, may be receiving means, altering means and assigning means provided by data stream processing system 502, selecting means provided by user control 508, presenting means provided by output means 506, and providing means provided by output system 504 via data stream 510 of Figure 5 performing the steps described in the specification at page 21, lines 29, to page 24, line 6, or equivalent. A person having ordinary skill in the art would be able to derive computer instructions on a computer readable medium as recited in claim 44 given Figure 8 and the corresponding description at page 21, line 29 to page 24, line 6, without undue experimentation.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL****A. GROUND OF REJECTION (Claims 1-7, 11, 13-28, 32, and 34-44)**

Claims 1-7, 11, 13-28, 32, and 34-44 are rejected under 35 U.S.C. § 102(e) as being allegedly unpatentable over Freeman et al. (U.S. Patent No. 5,861,881).

**B. GROUND OF REJECTION (Claims 12 and 33)**

Claims 12 and 33 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Freeman et al. (U.S. Patent No. 5,861,881) in view of Boblin et al. (U.S. Patent No. 4,316,285).

**C. GROUND OF REJECTION (Claims 8, 9, 29, and 30)**

Claims 8, 9, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Freeman et al. (U.S. Patent No. 5,861,881) in view of Boblin et al. (U.S. Patent No. 4,316,285) in further view of Itakura et al (U.S. Patent No. 6, 493, 832).

## ARGUMENT

### **A. 35 U.S.C. § 102, Alleged Anticipation, Claims 1-7, 11-28, and 32-44**

The Examiner rejects claims 1-7, 11-28, and 33-44 under 35 U.S.C. § 102(e) as being anticipated by Freeman et al. (U.S. Patent No. 5,861,881). This rejection is respectfully traversed.

As to claim 1, the Examiner states:

Referring to claim 1, Freeman discloses receiving a set of audio and video streams (see Column 4, Lines 10-12).

Freeman also discloses presenting selected ones of the set of audio and video streams (see Column 5, Lines 38-40).

Freeman also discloses that responsive to a user input to the data processing system, selectively altering the selected ones of the set of video and audio streams presented for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream (see Column 5, Lines 55-58 and Column 6, Lines 40-44 for creating personalized graphics in response to user inputs and Column 5, Lines 13-17 for branching to different segments of the audio/video streams, where the segments are stored on the computer's hard drive (see Column 5, Lines 20-24) and are transmitted by the headend in Figure 5 (also note Column 6, Lines 45-48)). Therefore, personalized graphics can be produced in response to user inputs; thereby creating altered streams, which omit specific streams transmitted from the headend, while utilizing others.

Freeman also discloses presenting the selected and altered streams concurrently (see Column 15, Line 64 through Column 16, Line 20).

Office Action dated September 19, 2005, pages 2-3.

Claim 1 is a representative claim from the rejected claims reads as follows:

1. A method in a data processing system for user controlled selection of multimedia data streams for an event, the method comprising:
  - receiving a set of video streams;
  - receiving a set of audio streams;
  - selecting ones of the set of video streams;
  - selecting ones of the set of audio streams;
  - responsive to user input to the data processing system, selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream; and
  - presenting the selected and altered streams concurrently.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. In *re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. In *re Lowry*, 32 F.3d 1579, 1582, 21 U.S.P.Q.2d 1031, 1034 (Fed Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Appellants respectfully submit that Freeman does not teach every element of the claimed invention arranged as they are in the claims. Specifically, Freeman does not teach responsive to user input to the data processing system, selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream, and presenting the selected and altered streams concurrently.

Freeman is directed to an interactive computer system where subscribers interact with a fully interactive program through the use of input devices and a personal computer or a television. The multiple video/audio data streams may be received from a broadcast transmission source or may be resident in local or external storage. In response to user inputs, a personalized graphics, video and/or audio presentation is provided to the user either immediately or at a later time.

Thus, Freeman merely teaches a presentation system where a user may select a single video stream and a single audio stream presentation which is presented in a personalized graphic presentation. If the user wants to be presented with a different video stream or a different audio stream, the user must select the different video or audio stream and then the Freeman system switches the current video or audio stream to the newly selected stream. Nowhere, in any section of the Freeman reference, is it taught that responsive to user input to the data processing system, selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream; and presenting the selected and altered streams concurrently.

The Examiner alleges that these features are taught at column 5, lines 55-62; column 6, lines 40-44; column 5, lines 13-17; column 5, lines 20-24; and column 6, lines 45-58, which read as follows:

Regardless of the type of input device 22, user inputs can be utilized by the present invention immediately, or at a later time, to result in personalized graphics, video and/or audio presentation. For example, the present invention utilizes "trigger points," as described below, to enable subsequent branches among multimedia segments during the show. Additionally, more substantive user

input, such as pictures and text, may be integrated into the interactive presentation.

(Column 5, lines 55-62)

Personalized audio and/or video selection occurs by the main processor sending a branching command to the cable set top box. The cable set top box processor interprets the command and seamlessly branches to the selected video.

(Column 6, lines 40-44)

While one device is playing the video, the other searches for a new branch. When the second device finds the segment for output display, the other input device searches for a new branch. When the second device finds the segment to be shown, the branch occurs seamlessly.

(Column 5, lines 13-17)

Segments of the interactive program may also be stored on the computer's hard disk 34. The segments stored on the hard disk, 34 are usually computer graphics, still images or audio segments, which are integrated into the presentation. The format for storage on the hard disk 34 is digital.

(Column 5, lines 20-24)

In the embodiment of FIG. 5, the subscriber can receive typical conventional video analog programming from a cable headend. Cable systems also may be used to convey digital data via a system such as the High-Speed Cable Data Service (HSCDS). In a digital system, the subscriber stations may receive programming from content servers or Internet Protocol (IP) routers. Content servers are typically a combination computer and data storage system that stores various types of content from information source providers. These providers might provide anything ranging from video games, distance learning applications, interactive applications, home shopping applications, online magazines and newspapers, databases, and typical network and cable programming.

(Column 6, lines 45-58)

In column 5, lines 55-62, Freeman describes using user inputs to provide a personalized graphics, video and/or audio presentation. In column 6, lines 40-44, Freeman describes the personalized audio and/or video selection selected by the user occurs by the main processor sending a branching command to the cable set top box and the cable set top box processor interprets the command and seamlessly branches to the video selected by the user. In column 5, lines 13-17, Freeman describes the cable set top box seamlessly branching from one segment that is being sent for output display to a second segment for output display. In column 5, lines 20-24, Freeman describes that the segments for the interactive program may be stored on the computer's hard disk. In column 6, lines 45-58, Freeman describes that the user (or subscriber) may select from various video analog programming that is available at the cable headend. Nowhere in these sections, or any other section of Freeman, is there a teaching to selectively alter ones of the selected video streams and ones of the selected audio streams for the event responsive to user input to the data processing system.

Freeman teaches presenting only one video and one audio to the user at column 5, lines 37-45, which reads as follows:

The CPU 108 determines what video to display and audio to play based upon the interactive commands which it receives. Based upon the commands, it plays the appropriate input from its input devices, which are the Video Selector 10, Video Sources 38, 42 and Hard Disk 34. Audio is received and processed by the Audio Card 30 which sends audio to Speakers 26 and/or headphones 50 as shown in FIGS. 1-3.

In this section Freeman describes presenting the selected video and the selected audio to the users based on the interactive commands it receives from the user. While the user of Freeman may select from various video streams, the various video streams are **not altered** to selectively omit content of at least one of the selected streams while retain other content for presentation to produce an altered stream as recited in claim 1. Freeman presents one segment to be output and may switch to another segment for output; however, none of the segments are altered. Additionally, none of the segments within Freeman are altered such that content is selectively omitted content of at least one of the selected streams while retaining other content for presentation to produce an altered stream.

Furthermore, Freeman does not teach presenting the selected and altered streams concurrently are recited in claim 1. In the section cited above by the Examiner for the presenting

step, a video and audio are selected by a video selector and an audio selected for presentation. Nowhere, however, does this cited section in Freeman present selected and altered streams concurrently as recited in claim 1. As discussed above, Freeman does not alter to selectively omit content of at least one of the selected streams while retain other content for presentation to produce an altered stream. Freeman is concerned with sequential mixing rather than concurrent mixing. In other words, there is a lot of selection and branching provided by Freeman, but Freeman does not modify the stream itself. Freeman changes from one selected stream to another and tries to splice them seamlessly together. Freeman does not present an altered stream that has been altered by selectively omitting content of at least one of the selected streams while retaining other content for presentation to produce an altered stream

Thus, Freeman fails to teach all of the features in independent claims 1, 14, 22, 35, 43, and 44. At least by virtue of their dependency on claims 1, 14, 22, and 35, the specific features of claims 2-7, 11, 13, 15-21, 23-28, 32, 34, and 36-42 are not taught by Freeman. Accordingly, Appellant respectfully requests that the rejection of claims 1-7, 11, 13-28, 32, and 34-44 under 35 U.S.C. § 102(e) not be sustained.

**B. 35 U.S.C. § 103, Alleged Obviousness, Claims 12 and 33**

The Examiner rejects claims 12 and 33 under 35 U.S.C. § 102(a) as being unpatentable over Freeman et al. (U.S. Patent No. 5,861,881) in view of Bobilin et al. (U.S. Patent No. 4,316,285). This rejection is respectfully traversed.

Claims 12 and 33 are dependent on independent claims 1 and 22 and, thus, these claims distinguish over Freeman for at least the reasons noted above with regards to claims 1 and 22. Moreover, Bobilin and the Examiner's Official Notice does not provide for the deficiencies of Freeman and, thus, any alleged combination of Freeman, Bobilin, and the Official Notice would not be sufficient to reject independent claims 1 and 22 or claims 12 and 33 by virtue of their dependency. That is, Bobilin and the Official Notice does not teach or suggest selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream in response to user input to the data processing system.

Moreover, the Examiner may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of Applicants' disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, Freeman and Bobilin cannot be properly combined to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to make the proposed combination, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicants' disclosure a model for the needed changes.

Furthermore, there is no teaching, suggestion, or incentive to combine the teachings of Freeman with the teachings of Bobilin and the Examiner's Official Notice. The Examiner alleges the reason for the combination is "for the purpose of providing the user with a compact device for receiving and viewing the different types of video, audio and data streams." However, the combination of Freeman, Bobilin, and the Official Notice is not a combination based the prior art. The combination of elements from nonanalogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the Appellants' invention itself. *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992). As discussed above, Freeman does not selectively alter ones of the selected video streams and ones of the selected audio streams for the event responsive to user input to the data processing system. Bobilin is not used by the Examiner to teach any of the features. Thus, one would not look to old and well known teachings of a personal digital assistant to solve the deficiencies of Freeman and Bobilin.

One of ordinary skill in the art, being presented only with Freeman, Bobilin and the Official Notice, and without having a prior knowledge of Appellants' claimed invention, would not have found it obvious to combine and modify Freeman, Bobilin and the Official Notice to arrive at Appellants' claimed invention. To the contrary, even if one were somehow motivated to combine Freeman, Bobilin, and the Official Notice, and it were somehow possible to combine the systems, the result would not be the invention, as recited in claim 1. The result would be



simply present one segment to be output and may switch to another segment for output to a PDA. The resulting system still would not perform the features recited in claim 1.

In view of the above, Freeman and Bobilin, taken either alone or in combination, fail to teach or suggest the specific features recited in independent claims 1 and 22, from which claims 12 and 33 depend. Accordingly, Appellant respectfully requests that the rejection of claims 12 and 33 under 35 U.S.C. § 103(a) not be sustained.

**C. 35 U.S.C. § 103. Alleged Obviousness, Claims 8, 9, 29, and 30**

The Examiner rejects claims 8, 9, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. Patent No. 5,861,881) in view of Bobilin et al (U.S. Patent No. 4,316,285) in further view of Itakura et al. (U.S. Patent no. 6,493,832). This rejection is respectfully traversed.

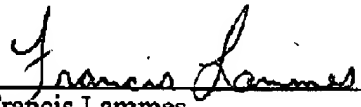
Claims 8, 9, 29, and 30 are dependent on independent claims 1 and 22 and, thus, these claims distinguish over Freeman and Bobilin for at least the reasons noted above with regards to claims 1 and 22. Moreover, Itakura does not provide for the deficiencies of Freeman and Bobilin and, thus, any alleged combination of Freeman, Bobilin, and Itakura would not be sufficient to reject independent claims 1, and 22 or claims 8, 9, 29, and 30 by virtue of their dependency. That is, Itakura does not teach or suggest selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream in response to user input to the data processing system.

Moreover, the Examiner may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of Applicants' disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, Freeman, Bobilin, and Itakura cannot be properly combined to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to make the proposed combination, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicants' disclosure a model for the needed changes.

In view of the above, Freeman, Bobilin, and Itakura, taken either alone or in combination, fail to teach or suggest the specific features recited in independent claims 1 and 22, from which claims 8, 9, 29 and 30 depend. Accordingly, Appellants respectfully request that the rejection of claims 8, 9, 29, and 30 under 35 U.S.C. § 103(a) not be sustained.

### CONCLUSION

In view of the above, Appellant respectfully submits that claims 1-9, 11-30, and 32-44 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellant respectfully requests the Board of Patent Appeals and Interferences to not sustain the rejections set forth in the Final Office Action.

  
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**CLAIMS APPENDIX**

The text of the claims involved in the appeal are:

1. A method in a data processing system for user controlled selection of multimedia data streams for an event, the method comprising:

receiving a set of video streams;

receiving a set of audio streams;

selecting ones of the set of video streams;

selecting ones of the set of audio streams;

responsive to user input to the data processing system, selectively altering ones of the selected video streams and ones of the selected audio streams for the event, wherein the altering step selectively omits content of at least one of the selected streams while retaining other content for presentation to produce an altered stream; and

presenting the selected and altered streams concurrently.

2. The method of claim 1, wherein the ones of the selected video streams are presented on a display and wherein the step of selectively altering ones of the selected video streams and ones of the selected audio streams presented includes:

altering a location in the display in which the ones of the selected video streams are presented.

3. The method of claim 1, further comprising:

selecting different selected ones of the set of video streams for presentation.

4. The method of claim 1, further comprising:  
selecting additional selected ones of the set of video streams for presentation.
5. The method of claim 1, further comprising:  
selecting different selected ones of the set of audio streams for presentation.
6. The method of claim 1, further comprising:  
selecting additional selected ones of the set of audio streams for presentation.
7. The method of claim 1 further comprising:  
receiving a set of information streams including text; and  
responsive to user input, selectively presenting selected ones of the set of information streams on a display.
8. The method of claim 1, wherein the set of video streams and the set of audio streams include time stamps and further comprising:  
synchronizing the selected ones of the video stream with the selected ones of the audio stream using the time stamps.
9. The method of claim 1, wherein the set of video streams and the set of audio streams include data packets located in the video and audio data streams periodically and further comprising:

synchronizing the selected ones of the video stream with the selected ones of the audio stream using the data packets.

11. The method of claim 1, wherein the data processing system is a computer.
12. The method of claim 1, wherein the data processing system is a personal digital assistant.
13. The method of claim 1, wherein the data processing system is a television.